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SUBJECT: OVERCROWDING BIGGEST PROBLEM IN KENYAN PRISONS

¶1. Summary: In late January, poloff joined a delegation from the UN Office on Drugs and Crime (UNODC) to visit three Nairobi-area prisons. UNODC is considering allocating some funding to assist the Kenya Prisons Service (KPS) in improving prison conditions. KPS officials seemed quite open in showing their operations, and requested training or technical assistance in dealing with inmates with drug addiction and mental health issues. While there was reasonable access to food, medical treatment, work, and educational opportunities, overcrowding was a serious problem, especially among pretrial detainees. Antiquated facilities also lacked proper sanitation, posing public health concerns. Post plans a follow-up meeting with UNODC and a local Catholic NGO providing assistance to inmates (Father Grols Welfare Projects) and will continue to monitor prison conditions as appropriate. End summary.

¶2. On January 24, poloff accompanied officials from the UN Office on Drugs and Crime (UNODC) on a visit to three Nairobi-area prisons: Kamiti, Remand, and Langata Women's. Many of Kenya's prisons are housed in crumbling colonial-era buildings. The newest of the three facilities we visited was built in 1948. The Kenya Prisons Service (KPS), under the Ministry of Home Affairs, runs almost 100 prisons around Kenya, which collectively house almost 50,000 inmates. Nationwide, some 3,500 inmates have been sentenced to death, although Kenya has not carried out an execution since 1987. Most so-called condemned inmates are in effect serving life sentences without the possibility of parole, and are generally kept segregated from other convicted and remand inmates. Overcrowding, especially among inmates being held in pretrial detention, is the most urgent problem facing the prison system. Prison officials also struggle to cope with mentally ill and drug-addicted inmates, as well as to muster sufficient resources to address medical issues and public health and sanitation concerns in prison.

¶3. We observed instances in these adult prisons of inmates who appeared to be juveniles or were juveniles at the time they were first incarcerated, although Kenyan law does not allow persons under 18 to be housed in adult prisons. (Note: The Youth Correctional Training Center is a sister institution to Kamiti and houses juvenile offenders.) Parole (called "remission") of one third of the sentence is theoretically possible for all crimes except murder or robbery with violence convictions. Under the current constitution, the President has sweeping powers of pardon, and may commute death sentences to life terms, release minor offenders, and/or grant early release to inmates with less than six months remaining on their sentences. Traditionally, the President pardons thousands of inmates (virtually all of them non-violent offenders) on Kenya's independence day,

December 12. These pardons are an important vehicle for relieving overcrowding, and thus are welcomed by prison officials. In 2008, President Kibaki pardoned a total of 11,523 prisoners, including 4,980 on independence day.

¶4. By law, Kenyan prisons are subject to a judicial inspection process. Judges are appointed by the Permanent Secretary of the Ministry of Home Affairs, which oversees the Kenya Prisons Service, to monitor specific prisons. The judges' reports are reviewed by the Ministry and forwarded to the Prisons Service for corrective action. Judges also hear inmates' complaints and sometimes make efforts to expedite the judicial process for remand inmates. The extent of oversight varies widely depending on which judge has been appointed. Judges can only be replaced by the Permanent Secretary at the Ministry, so prisons assigned to judges who are lax in their oversight responsibilities can often go many months without a visit.

¶5. Kamiti Prison, one of Kenya's largest, houses almost 3,600 prisoners in a space with a capacity of 1,500. On the remand side, eight inmates were sharing the small cells (roughly 8x10 feet) while up to 80 inmates slept in the large cells (roughly 30x50 feet). Kamiti also has a "special wing" which houses celebrity prisoners like Tom Cholmondeley (grandson of famed white settler Lord Delamere, currently awaiting the verdict in his murder trial) and other sons of Kenya's elite in relative comfort. As in other prisons, remand, convicted, and condemned inmates are housed separately. Bail is not permitted in cases of murder and robbery with violence (RV), so most remand inmates are facing those charges. There are

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also some inmates charged with minor offenses who cannot make bail due to lack of funds. Condemned and remand inmates are not permitted to work; idleness and overcrowding increases tension and violence among these inmates. Convicted inmates may work in prison workshops making license plates and furniture or attend school, although there are not enough places to accommodate everyone. Convicted inmates are permitted one visit per month; remand inmates have unlimited visits, although family members have allegedly complained about prison guards asking for bribes to facilitate visits. The food, prepared by inmate cooks, appeared adequate and nutritious. The menu the day of the visit was ugali (maize flour porridge, a staple of the Kenyan diet) and kidney beans. Guards are armed only with wooden batons, but did not seem to have difficulty maintaining order or getting prisoners to follow commands, even in the overcrowded remand section. Prisoner reactions to commands from the guards suggested that the use of force to maintain order is not uncommon.

¶6. Remand Prison houses 2,700 inmates and has capacity for 3,500. The warden, Pauline Wanja Ngara, estimated that there are 60-70 inmates with drug addiction issues that require professional treatment. The Prison Service has a policy of concentrating inmates with mental health issues in Nairobi-area prisons. They can be referred by the warden of their institution to Mathare Hospital, the nation's only public mental hospital, although Mathare has a long waiting list. In theory, if their condition improves, they are then returned to the prison to stand trial and/or serve the remainder of their sentences. Due to lack of space at Mathare, mentally ill inmates at Remand are warehoused in poor conditions in a separate cell block. They are also lumped together regardless of diagnosis, so someone with depression may be housed with others suffering from schizophrenia or psychosis. Prison officials do make efforts to relocate the most disruptive or potentially violent inmates to Mathare's locked ward. Remand houses some 40 inmates with serious mental health issues, as well as 30 inmates with active TB, all segregated from the general population. Remand Prison offers inmates the chance to attend school, and officials from the Ministry of Education visit the prison to administer national exams for primary and

secondary school completion.

17. Langata Women's Prison houses about 560 inmates, about 275 convicted and 285 remand, and is overcrowded only on the remand side. There were more women incarcerated for minor offenses like loitering and petty theft than in the men's prisons, both on the remand and convicted sides of the prison, often because they lacked the funds to make bail. The warden cited the need for training on drug abuse treatment, noting that a significant number of inmates were addicted to drugs and needed help to address both their addictions and the underlying causes. Women who arrive pregnant are permitted to keep children with them in prison until the child is four years old. They deliver their children at the Kenyatta National Hospital. At the time of our visit, there were 30 children living in the prison. They sleep in a nursery, which was recently renovated with support from the local Rotary Club chapter and appeared clean and comfortable. Nationwide, Kenya has 13 women's prisons, as well as women's wings in some men's prisons, for a total of about 20 facilities serving female inmates. In order to reduce the potential for abuses, all the wardens inside the women's prison are female. Some male guards perform perimeter security responsibilities, but are not supposed to have any contact with the inmates.

18. The average wait to complete the judicial process is three years for RV cases, and five years for murders. We spoke with one inmate at Kamiti who has been on remand for seven years and has yet to complete his trial. Kenya does not permit plea bargaining (although draft legislation has been proposed to establish it), and the court system faces a backlog of an estimated one million criminal cases alone. When cases are transferred among judges, they must restart, putting the inmate in a surreal situation where portions of his trial are repeated ad nauseum without real progress towards a verdict. This is partly because Kenyan courts do not have court reporters. Instead, judges are responsible for taking notes on the proceedings, and there are no mechanisms for accepting a colleague's partial transcript of proceedings.

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19. Comment: Although the Kenyan prison system faces some major challenges, the management team of the KPS was remarkably open about its weaknesses and areas where technical assistance is most needed. Unfortunately, any fixes to the prison system will be largely cosmetic unless the deficits in the criminal justice system that contribute to overcrowding are also addressed. Post continues to advocate for the implementation of the plea bargaining legislation that passed in December 2008, although the prison officials with whom we discussed it expressed some concerns that it could be a vehicle for corruption in the Kenyan context. We will continue to monitor prison conditions, including future visits to prisons outside Nairobi, and will meet with the local NGO doing prison outreach to discuss their perspectives on prison conditions, to be reported septel. End comment.
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